FILE COPY

SEP 20 1972

In the Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-1192

DONALD GOLDSTEIN, RUTH KOVEN and DONALD KOVEN,

Petitioners,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Appellate Department of the Superior Court of the County of Los Angeles, State of California.

BRIEF AND APPENDIX OF THE ATTORNEY GENERAL OF THE STATE OF FLORIDA, AMICUS CURIAE, IN SUPPORT OF RESPONDENT

WILLIAM J. DUNAJ
Special Assistant Attorney General

ROBERT L. SHEVIN
Attorney General of the State of Florida
Amicus Curiae

MIAMI REVIEW — 371-4853 — 377-3721

TABLE OF CONTENTS

Page

ARGUMENT — Like Florida Statute 543.041, the California Statute here challenged is not in conflict with the United States Constitution or any federal law 2

Florida Statute 543.041 ..... App. A

in the
Supreme Court
of the
United States

OCTOBER TERM, 1971

NO. 71-1192

DONALD GOLDSTEIN, RUTH KOVEN and DONALD KOVEN,

Petitioners,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Appellate Department of the Superior Court of the County of Los Angeles, State of California.

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF FLORIDA, AMICUS CURIAE, IN SUPPORT OF RESPONDENT

The Attorney General of the State of Florida files this brief, as an *amicus* because the State of Florida has enacted Florida Statute 543.041 which is similar to Section 653(h), California's Penal Code under attack in the instant case. A copy of the Florida Statute is appended hereto as Appendix A. Thus, the State of Florida has a direct concern in upholding the validity of the Statute under attack in the instant case.

ARGUMENT

Florida urges that the California Statute be sustained as a proper state legislative enactment. Florida is aware of the other briefs filed in the present case *amicus curiae* as well as the brief of the Respondent. Because of the number of briefs, and because they very capably advance the important issues, Florida will join in on the arguments in those briefs and not burden this Court with an extended brief. However, it is significant that Florida and a number of other states have each independently assessed the business practices of the record duplicators and passed laws similar to California's Statute outlawing them. The business of duplicating other people's recordings and selling second and third hand copies as the original is deceptive to the public, theft as to the owner of the recording and not significantly different from the business of duplicating other people's signatures on checks or securities for profit. It is urged that States have the power and the duty to pass these laws to protect their citizens.

CONCLUSION

Since there is no conflict between these laws, as typified in the California law, and the federal Constitution or legislation, the Statute should be upheld as an appropriate state regulation.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General of the
State of Florida
Amicus Curiae

WILLIAM J. DUNAJ
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true copies of the foregoing brief were this ____ day of September, 1972, mailed to GOTTLIEB, LOCKE & LEEDS, 9229 Sunset Boulevard, Suite 306, Los Angeles, California, 90069, attorneys for Petitioners and to David M. Schacter, Office of the City Attorney for the City of Los Angeles, Los Angeles, California, attorney for Respondent.

WILLIAM J. DUNAJ
Special Assistant Attorney General

APPENDIX A

FLORIDA STATUTE 543.041

543.041 Unauthorized copying of phonograph records, disc, wire, tape, film or other article on which sounds are recorded.—

(1) As used in this section, unless the context otherwise requires:

(a) "Owner" means the person who owns the master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived.

(b) "Person" means any individual, partnership, corporation, or association.

(2) It is unlawful:

(a) Knowingly and willfully and without the consent of the owner, to transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded, with the intent to sell or cause to be sold for profit such article on which sounds are so transferred.

(b) To sell any such article with the knowledge that the sounds thereon have been so transferred without the consent of the owner.

(3) Any person violating any provision of subsection (2) shall be guilty of a misdemeanor of the second degree, punishable as provided in §775.082 or §775.083.

(4) This section shall neither enlarge nor diminish the right of parties in private litigation. This section shall not be construed in any way to affect §§543.02, 543.03, and 543.04.

History.—§§1, 1A, ch. 71-102.